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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination
Ninety-sixth session

Summary record of the 2661st meeting
Held at the Palais Wilson, Geneva, on Thursday, 16 August 2018, at 10.15 a.m.

Chair: Mr. Amir
later: Mr. Murillo Martinez (Vice-Chair)
later: Mr. Amir (Chair)

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The meeting was called to order at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined nineteenth to twenty-first periodic reports of Cuba (*continued*) (CERD/C/CUB/19-21; CERD/C/CUB/Q/19-21)

1. *At the invitation of the Chair, the delegation of Cuba took places at the Committee table.*

2. **Mr. Renzoli Medina** (Cuba) said that the most recent census, conducted in 2012, had been the first to take self-identification into account. In general, Cubans identified themselves not according to their ethnic or national origins but according to their skin colour. The three most common categories for self-identification were black, white and mulatto. Individuals described themselves according to how they perceived their own skin colour. For example, there could be black persons who might consider themselves mulatto because they were lighter-skinned than other black persons.

3. As to the question of the comparability of the mestizo culture in Cuba with that of other Latin American countries, such as Brazil, Mexico and Paraguay, he wished to stress that there were important differences between the situation of Cuba and that of other countries in Latin America. In all those other countries, the various indigenous peoples in each country were recognized ethnic minorities and had settled in different geographical areas; in Cuba, there was one, single mestizo culture, it was shared by the entire country and it had its own particularities with regard to religious beliefs, popular traditions and language.

4. In the amended Constitution that would be put to a referendum in 2019, the mention of "race" had been removed from among the punishable forms of discrimination listed in article 42. Discrimination on the basis of colour or national origin would continue to be punishable; no reference would be made to race, however, because that was the cultural reality of Cuba. Racial discrimination did however exist in Cuba as a legacy of the five centuries of colonialism the country had endured and, in that regard, it was unrealistic to expect such deep-rooted prejudices to have been eliminated after only 60 years of independence.

5. Structural discrimination did not exist in Cuba inasmuch as there was no segregation of any type. Ethnic minorities did not exist in Cuba: there were no Afro-Cubans or Spanish-Cubans; there were only Cubans. An example of the country's unity could be found in the fact that the Cuban people had chosen a white man, Carlos Manuel de Céspedes del Castillo, as the father of their nation, and a black woman, Mariana Grajales Cuello, as the mother of their nation. The segregation that had been present in Cuban society following the abolition of slavery in 1886 had been eradicated as a result of the social equality measures brought in by the revolution. There was not a single school, university or workplace in which segregation existed.

6. The teaching of history in schools had undergone some changes. It no longer focused on the history of white Europeans in Cuba but rather covered all peoples and groups, including black people, mulattos and indigenous peoples. The new secondary education curriculum included components on cultural diversity; and some 170 schools in Cuba were involved in the implementation of the Slave Route Project.

7. There was at present no national plan against racial discrimination in place in Cuba but efforts to draft one were under way. A number of sectoral plans existed, focusing on such areas as education, culture, environment, tourism, justice, and science and technology, among others. Those plans contained specific and measurable objectives to combat racial discrimination in their respective spheres. The sectoral plans had been drafted in a coordinated manner by line ministries. Civil society organizations, such as the José Antonio Aponte Commission of the National Union of Writers and Artists of Cuba, had also provided input. The implementation of the plans was monitored at the highest level by the Council of Ministers. Once the plans had been consolidated, efforts would be focused on creating a national plan against racial discrimination.

8. The Ministry of Culture had launched a programme to commemorate the International Decade for People of African Descent and a number of related activities had already been carried out. While Cuba did not recognize the concept of Afrodescendent women, over 50 per cent of parliamentarians in the National Assembly were women and over 40 per cent of parliamentarians were black or mulatto. In Cuba, 60 per cent of university graduates were women, nearly 70 per cent of professional and technical positions were occupied by women and over 80 per cent of judges were women. According to the census figures, 80 per cent of all doctoral and master's degrees were held by women; of those women, 45 per cent were black or mulatto. That compared with a figure of 36 per cent of the population overall that had self-identified as black or mulatto.

9. As to article 68 of the proposed amended Constitution, which referred to equality in general, same-sex marriage would be made legal.

10. Although there was no extreme poverty in Cuba, there were disadvantaged neighbourhoods that had makeshift housing. Nonetheless, those neighbourhoods had access to electricity, telephone lines and running water. It was true that marginalized areas tended to have a higher population of black people and mestizos in provinces where the latter accounted for more of the general population; just as it was also true that in provinces with predominantly white residents, marginalized areas were similarly predominantly white.

11. Cuba did have people of indigenous descent, and not just those descended from the native Arawak community. It was also home to descendants of indigenous peoples from other Latin American countries who had been brought to Cuba as slaves or workers by colonial Powers. Those groups included the Guajiro from Venezuela and the Tarahumara Maya-K'iche' from Mexico. Their descendants had mixed with other ethnicities in the intervening period, thereby contributing to the formation of the unique ethnic amalgam that was Cuba.

12. **Ms. Sosa Prego** (Cuba) said that the Constitution prohibited racial discrimination and that the Criminal Code provided for the punishment of racial segregation and crimes infringing the right to equality. A significant number of laws and regulations were currently being updated to help combat discrimination. For instance, the inclusion of racial motivation as an aggravating circumstance in the commission of a crime was being discussed as a possible amendment to the Criminal Code.

13. Intergovernmental bodies and civil society organizations actively dealt with cases of discrimination based on colour or race. Moreover, the Office of the Attorney General was committed to promoting a legal culture in Cuban society and to making it easier for the public to have access to information about human rights and to file complaints in the event of a violation. No cases of racial segregation or infringement of the right to equality had been brought before the courts. However, in 2017, the provincial office of the Attorney General in Havana had received a complaint from a black woman who had accused a white taxi driver of discriminating against her on the basis of her skin colour. An investigation into the matter had found the complaint to be substantiated; the offender had subsequently apologized and been fined 500 pesos. As the victim had been satisfied with the outcome, that offence had been punished exclusively by an administrative sanction.

14. Racial, structural and institutional discrimination was prohibited in all spheres in Cuba, including in the workplace. Article 2 of the Labour Code established fundamental principles governing the right to work, including that of non-discrimination on the basis of skin colour, and provided for the right to training and development, social security and health in the workplace. Discrimination in employment on the grounds of gender, sexual orientation, disability or any other distinction that constituted an attack on human dignity was prohibited. The Labour Code fully protected the right to work and established guarantees against unjustified dismissal and procedures for workers to have their rights upheld in the event of a violation. The Criminal Code afforded additional protection of labour rights and included the offence of "improper imposition of disciplinary measures", with the provision that those who imposed illegal disciplinary measures on workers out of enmity or vengeance or for any other malicious purpose — including a racial motivation — would face more severe penalties.

15. There were no legal or practical obstacles to prevent individuals from reporting acts of racial discrimination to the authorities, and such complaints received the authorities' full attention. In fact, article 63 of the Constitution recognized the right of citizens to file complaints with the authorities and to receive an appropriate response. Citizens could address complaints to the Attorney General's Office either in person at one of its local offices or by using its hotline, website or email account; they could also contact the public service offices attached to the central State administration or avail themselves of other forums and mechanisms. All departments of the Attorney General's Office had specialized prosecutors devoted to protecting the rights of citizens.

16. As part of the process of strengthening the human rights legal framework, the Attorney General's Office and other institutions had stepped up dissemination activities in cooperation with grass-roots, social and media organizations. Coordinated communication activities, including the broadcast of television and radio programmes and advertisements, had been carried out to raise citizens' awareness of what they should do if they believed their rights had been violated. In addition to strengthening its human and other resources, the Attorney General's Office had created new channels for receiving complaints, including a 24-hour hotline, which was especially useful for older persons and persons who lived in remote areas.

17. The public consultation process on the draft constitutional amendments had commenced on 13 August 2018. Of particular note were article 16 (f) of the draft, which established that the State defended and protected the enjoyment of human rights and repudiated all manifestations of racism and discrimination, and article 17, which stipulated that obligations under international treaties ratified by Cuba formed part of the domestic legal order. Article 40 established that all persons were equal before the law, had the same duties, received the same protection and treatment from the authorities and enjoyed the same rights, freedoms and opportunities, without discrimination on any grounds. Violations of that principle were punishable by law.

18. The borders of Cuba were protected under article 215 of the Criminal Code, which concerned the offence of illegal entry into the national territory. Such cases were infrequent and were usually associated with the trafficking of migrants. The fact that black or mulatto persons were not excluded from working in the court system or the Attorney General's Office was demonstrated by the fact that the ethnic composition of staff working in those institutions was broadly in line with that of the general population as reported in the most recent census. In the Attorney General's Office, 65 per cent of prosecutors were white, 22 per cent mestizo or mulatto and 12 per cent black; while in the court system, 68.8 per cent of judges were white, 18.5 per cent mestizo and 12.7 per cent black. The positions of President of the People's Supreme Court, Attorney General and Minister of Justice were all held by black or mestizo persons.

19. **Mr. Quintanilla Román** (Cuba) said that Cuba had millions of human rights defenders who worked either individually or for one of 2,200 non-governmental organizations. The Government did not place restrictions on such organizations — or engage in reprisals, intimidation or harassment against them — but allowed them full freedom to carry out their activities. Contrary to the claims made of excessive use of force, law enforcement agencies acted only as required in order to protect internal order and public safety and did so in full conformity with the law and established procedures; administrative and criminal penalties for perpetrators of any abuses were established by law. The Government was concerned that the true state of human rights in Cuba was being distorted by the communications that had been sent by special procedures mandate holders in reference to individual cases and found it regrettable that the special procedures system of the Human Rights Council was being used in such a way. Many of the individuals named in the communications had been convicted of criminal offences that bore no relation to their activities in the human rights sphere.

20. In respect of engagement with civil society, he said that the National Union of Writers and Artists of Cuba had participated in the drafting of the State party's report and was represented on the delegation. The Ministry of Foreign Affairs had coordinated the drafting process and had consulted with various other civil society organizations, including the Cuban United Nations Association.

21. As to the migration measures that had entered into force in January 2018 and the exercise of the right to citizenship, he wished to draw attention to the elimination of the residency requirement for children born abroad. The measure was designed to prevent statelessness and would enable Cubans living in other countries to register their children as Cuban citizens.

22. Lastly, he said that while Cuba had no objection to the establishment of a national human rights institution in accordance with the Paris Principles, it was under no obligation to do so. Moreover, Cuba viewed such a step as unnecessary, since it already had an extensive system in place for the protection of all human rights in which governmental institutions were empowered to receive, process, investigate and respond to complaints of violations lodged by citizens. That mechanism was functioning effectively and the public was increasingly aware of the reporting channels available.

23. **Mr. González Behmaras** (Cuba) said that the law enforcement authorities did not discriminate on the basis of skin colour and that their conduct was regulated under the law. Cuba did not tolerate impunity and its criminal legislation made provision for aggravating circumstances such that tougher sentences were handed down when the perpetrator was a law enforcement or internal security agent or official.

24. As part of its efforts to strengthen the legal and regulatory framework for the protection of human rights, the Government was continuously striving to build law enforcement capacity, for instance by providing human rights training for officials and agents. Although all law enforcement institutions had assigned facilities, personnel and resources for that purpose, the Government was not yet satisfied with the results and it continued to monitor the institutions' activity and strengthen them with a view to better upholding the rule of law and human rights.

25. The law currently stipulated that the obligations contracted by Cuba upon becoming a party to an international human rights instrument must be observed by public institutions and citizens; such instruments formed part of the domestic legal order and there was nothing to prevent the competent authorities, including the courts, from invoking them. In fact, Cuban court decisions had already invoked the Convention on the Rights of the Child, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Corruption. Article 20 of the Civil Code stipulated that in the event of a contradiction, the provisions of international instruments prevailed over those of national legislation. Lastly, he said that the draft amendments to the Constitution contained a more specific provision on incorporating international treaty law into domestic law and that their adoption would trigger a process of amending and updating domestic legislation that was likely to include changes to the criminal and civil law frameworks, among others.

26. **Mr. Albuquerque e Silva** (Country Rapporteur) said that he wished to make clear to the delegation that his earlier use of the term "structural discrimination" referred to economic, social and cultural structures that marginalized specific groups of people as a result of historical processes; it was not the same as institutional discrimination. The concept was addressed in the Committee's general recommendation No. 34 on racial discrimination against people of African descent.

27. Regarding the statistics on the ethnic composition of the population, he had read an interview which suggested that census officials doubted the findings of their own survey and regarded them as inconsistent with what they could see in the street. Studies had shown that self-identification, although useful for understanding the identity and motivations of individuals and groups, was less useful when examining questions such as discrimination, in which race was externally identified by others. He therefore believed that it was necessary to obtain information on all individuals whom society did not perceive as white, including those who might not self-identify as such. Drawing attention to the Committee's general recommendation No. 8 concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, he said that the Committee was interested to know the extent to which implementation of the Convention might be compromised by the Government's system of data collection. He would be grateful for information about the methodology that the State party used and whether it relied on self-identification.

28. As to the allegations of harassment and reprisals that the Committee had received, could the State party provide written information concerning Juan Antonio Madrazo Luna and Roberto Santana and, in particular, the legal basis for the decision to bar them from travelling to attend the session? He took note of the assertion that there had been no repression of human rights defenders since the revolution and that such action would be contrary to the values of the State. However, in the light of the current global context, including the frequent threats against migrants and minorities in Europe and the growing risks facing human rights defenders around the world, he was perplexed to learn that Cuba had recorded no cases of harassment or violence against activists in recent decades. Given the information that the Committee and other United Nations bodies had often received about the situation of human rights defenders in Cuba, and considering that their role was by definition confrontational and unsympathetic to the State, he expressed doubt that there had not been any cases in which human rights defenders had been subjected to excessive force or harassment. In that sense, he wished to recall the important historical role that human rights defenders had played in securing rights and to emphasize their contribution to the Committee's work in defending the Convention. Finally, he would welcome disaggregated information on cases of trafficking in persons and on measures to prevent that phenomenon, as had been requested in paragraph 18 of the list of themes (CERD/C/CUB/Q/19-21).

29. **Mr. Calí Tzay**, endorsing the statement made by Mr. Albuquerque e Silva, said that it was sometimes necessary, however, to view the situation in a country through a sociological lens in order to gain a clear understanding. Many Latin American countries had striven for cultural uniformity, sometimes to the detriment of indigenous populations. While he supported the concept of "Cubanness" that had been fostered in the country, it was his hope that indigenous populations would be included without losing their culture. The Government should work towards multicultural national unity.

30. Although the delegation had not spoken about rural indigenous communities, he wondered whether the members of such communities were considered to be Cuban or, in some way, foreign.

31. While he fully respected and commended the idea that racial identity did not exist in the country inasmuch as all citizens were considered to be Cuban, he wondered how legislation against racial discrimination could be implemented in such a climate. It was important to remember that racial discrimination was perpetrated not only by the authorities but also by the general population.

32. **Mr. Avtonomov** said that he would like to hear about examples where the Convention had been invoked in the courts. Were judges and magistrates aware of the Convention? He would appreciate further information regarding the practices of the courts in that regard.

33. The Committee was not insisting that the State party's legislation should contain a specific reference to the concept of race, given that everyone was a member of one and the same race: the human race. However, racial discrimination did exist, and it was for that reason that he had asked why the reference to racial discrimination had been removed from the Labour Code.

34. He wished to know if Cuba had a Roma community at all. Groups could sometimes be rendered invisible, not as a result of government policy but owing to deep-rooted prejudices that led to constant discrimination. In that regard, Roma individuals were vulnerable and their situation should be monitored.

35. **Ms. Shepherd** said that she would welcome information on the Chinese community that had been present in the country since the 1850s. She would like to know whether they had become fully integrated or remained a significant and identifiable group with a distinct culture.

36. *Mr. Murillo Martínez (Vice-Chair) took the Chair.*

37. **Mr. Diaby**, expressing appreciation for the efforts of Cuba to eliminate discrimination and support liberation movements throughout the African continent in the twentieth century, said that he wished to know how the history of the struggle against

discrimination in Africa was taught to new generations and how it was perceived by the media and the general population.

38. Given that Cuba did not have a national human rights institution, he would appreciate more information regarding legislation that might take the place of such an institution.

39. *Mr. Amir resumed the Chair.*

40. **Mr. Reyes Rodríguez** (Cuba) said that it would take some time to clarify certain political issues as, unfortunately, some of the information that had appeared in the media regarding his country had been manipulated by interests that sought to discredit his Government and had not been properly verified before publication. Demographics varied significantly across the different provinces and municipalities of the country; statistics, rather than personal opinion and anecdote, should be used to analyse demographics.

41. The definition of "human rights defender" in Cuba was not restricted to someone who lodged a complaint with a treaty body or participated in campaigns against the Government. All civil society representatives were defenders of human rights. The cases of reprisals and harassment that had been mentioned by the Committee were related to specific infractions of migration legislation. Some individuals had attempted to gain preferential treatment by sending communications to treaty bodies and United Nations rapporteurs. The measures taken had not been related to the communication in any way but had been in line with national migration legislation.

42. Following the mission to Cuba by the Special Rapporteur on trafficking in persons, especially women and children, the Government had established — under the Ministry of Justice — a national mechanism to combat trafficking. Various other ministries had action plans in place to that same end. Further information on human trafficking would be provided in writing.

43. It was true that some black civil society leaders had been persecuted and even murdered in the past. However, that persecution had taken place at the beginning of the twentieth century when the population of Cuba had been under the control of the United States of America. Conflict and violence had been common at that time. Since the revolution, there had been no harassment of civil society leaders.

44. It was true as well that cases of racial discrimination had been recorded and prejudices did exist. For example, it was possible that prejudices might be manifested in the employment sphere. In that connection, the Government had established prevention mechanisms that were overseen by the Communist Party, such as the labour justice bodies and courts. In confirmed cases of racial discrimination, appropriate measures had been taken.

45. To his knowledge, there were no Roma communities in Cuba. However, Havana had a thriving Chinese community that produced newspapers and publications in Chinese. Although many members of the community had lost their ties to China over time and could not speak Chinese, their rights were fully respected.

46. **Mr. Pedroso Cuesta** (Cuba) said that for Cuba, a country distinct from other Latin American countries in that its population was composed almost entirely of individuals of European and African descent, it would not be right to assume a position that might not be appropriate for the country context. Cuba was a unique mix of cultures and peoples. Religious practices in the country, for example, were multiple and varied. While it was difficult to imagine white people in other parts of the Americas practising African religions, in Cuba there were many black, mulatto and white followers of Babalawo religious practices.

47. The concept of human rights defenders was a relative one in both cultural and historical terms. While legitimate questions had been raised by Committee members, the scope of the term "human rights defenders" varied according to different perspectives which were highly influenced by transnational media corporations and social networking sites.

48. **Mr. Renzoli Medina** (Cuba) said that Cuba had religious idiosyncrasies and cultural intermingling that were linked to the genetic diversity of the population. On the strength of his extensive interaction with civil society organizations in Cuba, he could vouch for the assertion that all of them were effectively human rights defenders. He was grateful for the clarification of the definition of the term "structural discrimination" within the meaning of the Convention and could confirm that the delegation's response had been in line with that definition. He wished to reiterate that there was no structural discrimination in Cuba.

49. Self-definition of race was an international practice, and a decision had been taken to follow it in Cuba. The Government held that citizens had a right to self-identify not just on the basis of skin colour but also taking into account other factors. The delegation could provide further information in writing upon request.

50. **Mr. Reyes Rodríguez** (Cuba) said that his delegation was truly satisfied with the debate that had taken place and it would be submitting additional information in writing to the Committee, including data on human trafficking.

51. **Mr. Albuquerque e Silva** said that the divergent perceptions on certain topics that had emerged over the course of the dialogue between the delegation and the Committee were both healthy and indicative of the vitality of the United Nations human rights monitoring system. He was convinced that Cuba viewed the Committee as its partner in combating racial discrimination through legislation and public policies. The task of the Committee was to try to reflect the perspective of victims of racial discrimination in order to cast a critical eye on any omissions by the State party with respect to the implementation of the Convention. The line between victims' reality and the perspective of a State party was always a blurry one, and it was up to the Committee to bring those two worlds closer together, with an emphasis on dialogue and cooperation.

52. **The Chair** said that he was grateful to the delegation for the light that they had shed on the issues raised and for being willing to probe critically into the situation on the ground in order to help the Committee to gain a more accurate understanding.

The meeting rose at 1.05 p.m.